Supreme Court, U.S.
FILED
APR 28 1989
JOSEPH F. SPANIOL, JR.
CLERK

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1989

EARLE A. DAISLEY,

Petitioner,

v.

GENERAL ELECTRIC COMPANY,

Respondent.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

PETITION FOR CERTIORARI

Earle A. Daisley
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Columbia, Maryland 21045
(301) 992-9621

QUESTION PRESENTED FOR REVIEW

Whether Petitioner's due process rights were violated when Petitioner was denied a rehearing by the Appeals Court for the Fourth Circuit in Petitioner's Title VII and ADEA case against the Respondent whom is being represented by the same law firm in which one of the deciding judges is a partner.

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Statutes

Civil Rights Act of 1964 (Public Law 88-352; 78 Stat. 241, 42 U.S.C. §2000e-5(g) et seq. 9,10,15,16

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28 U.S.C. §1254 (1) 7

Other Sources

Congressional Quarterly's Guide to the U.S. Supreme Court. pp 523, 526, 527, 528. pg 529 (An unbiased judge) pg 533 22

Judicial Staff Directory, 1988 Biographies of Judges and Staff, pg 701 Judge Murnaghan, Francis D. Jr. 13,21

OPINIONS BELOW

The opinion of the court of appeals (Appendix, infra, pp. App. 1-2) is unpublished. On Petition for Rehearing denied (Appendix, infra, pp. App. 3-4). District Court Memorandum dated May 9, 1988 - District Court Order dated May 9, 1988 granting summary judgment in favor of defendant and against plaintiff. (Separately presented pursuant to Rule 21(k)(iv). Memorandum and Order of District Court dated February 10, 1988. District Court Memorandum and Order dated November 25, 1987 denying defendant's Motion to Dismiss or, in the Alternative Motion for Summary Judgment. (Separately presented pursuant to Rule 21(k)(iv). Order of District Court dated May 27, 1987 directing both Defendant and Plaintiff to address the standards to be met for

summary judgment in Title VII and ADEA cases and discuss the extent to which those standards are or are not met in the instant case. (Appendix, infra, pp. App. 5-6).

JURISDICTIONAL STATEMENT

The decision of the Court of Appeals for the Fourth Circuit was entered as a judgment on December 19,1988. A petition for rehearing (FRAP 40) was filed on January 3, 1989. The Petition for Rehearing was denied on January 31, 1989. A Notice of Appeal to the Supreme Court of the United States in the United States Court of Appeals for the Fourth Circuit was submitted on February 4, 1989 and filed by the said Court on February 8, 1989. Jurisdiction of this Court to review this case on a petition for certiorari rests upon 28 U.S.C. §1254 (1). The appeal seeks direct application of the Constitution of the United States to this situation.

CONSTITUTIONAL PROVISION

No person shall ... be deprived of life, liberty, or property, without due process of law ....

U.S. Constitution, amend. V.

The constitutional requirement of procedural due process of law, i.e., notice and hearing, is found in the 5th Amendment as a limitation upon the federal government, and in the 14th Amendment as a limitation upon the states.

Pg. 176 - Constitutional Law.

No State ... shall deprive any person of life, liberty, or property, without due process of law.

Pg 298 - Constitutional Law.

STATEMENT OF THE CASE

Petitioner, a black male, 55 years old at the time of the events at issue, brought this action after respondent General Electric Company ("G.E.") laid him off from its Jessup, Maryland office and did not offer him a new position in any other GE office. The petitioner applied for job vacancies for which he was qualified and was rejected. The vacancies were filled by white females (with the exception of one black female), in data processing, and white males and females and persons younger than the petitioner, for the credit and collections positions. Petitioner alleges race and sex discrimination in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e et seq.

The genuine issues of fact "existed as to whether employees were terminated or retired on basis of age and whether employees were qualified for positions, thus precluding summary judgment in favor of employer." Petitioner was harassed and treated differently than other white, or under 55, or female employees, in the instances listed in the Complaint, and it all intensified following Petitioner's complaint to Opportunities Industrialization Center, (OiC) in Philadelphia. Petitioner contends that he was the victim of discrimination within the guidelines of Title VII and ADEA. The evidence presented at discovery has shown that both Joan Garver-Hoye and

James Borke's surreptitious monitoring and false (unsatisfactory) evaluation of Petitioner were totally wrong because they were acting in collusion and were more concerned in discrediting and discriminating against the Petitioner for the purpose of getting rid of Petitioner by giving Petitioner an inaccurate (unsatisfactory) evaluation in order to resolve the pay disparity between a keypuncher's wage and a grade 12 credit and collections clerk's wage paid to the Petitioner. Petitioner contends that he was the innocent victim of discrimination from the Respondent's decisionmakers concerned in resolving a problem that the Petitioner did not create. The Petitioner contends that the record as a whole has overwhelmingly demonstrated that the Respondent,

General Electric was motivated by race, sex and age discrimination. Petitioner contends that affidavits and exhibits presented by GE decisionmakers do not provide any concrete evidence to support its case, or constitute any legal grounds as a defense in this case because by their action of intentionally delaying hiring the Petitioner violative of the Howard County Code and waiting six years later to explain why they did it should be considered pretextual under Title VII and ADEA and therefore offers no legitimate non-discriminatory reasons for its action to rebut the presumption that the prima facie case creates.

Petitioner contends that the 1988 Judicial Staff Directory shows that Judge Francis D. Murnaghan is a partner in the law firm VENABLE, BAETJER & HOWARD. Petitioner contends that the Respondent, General Electric Company is represented by VENABLE, BAETJER & HOWARD. Judge Murnaghan's name appears on the petition denying the Petitioner a rehearing in the United States Court of Appeals for the Fourth Circuit. In view of this conflict of interest between the Judge and the Respondent, Petitioner contends that he has been denied due process under the constitution.

Petitioner Daisley seeks this Court's intervention to protect his constitutional due process rights.

ARGUMENT

Petitioner contends that the lower court has decided an important question of federal law which should be settled by a decision of this Court, or is in conflict with those decisions of this interpreting the Civil Rights Act of 1964 and the Due Process Clause of the Fifth Amendment of the United States Constitution. Specifically, prior decisions of this Court, as discussed below, define the fundamental fairness imposed on a federal determination to deprive one of property. Because Petitioner contends that he was not accorded such fairness, this Court should intervene. It is well settled that it shall be unlawful employment practice for an employer - (1) to fail

or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; ... Civil Rights Act of 1964 §703(a)(1) - §2000e-2(a)(1) §2000e-2. The position held and/or applied for was subject to the safeguards of the Civil Rights Act, supra, and thus the Petitioner could not be denied employment and rejected in favor of a prohibited class, such as persons of a different race, persons of an opposite sex, or persons younger than the Petitioner. The Petitioner had acquired 10 years of loyal and dedicated service to the Respondent employer.

Due Process requires that the court which assumes to determine the rights of parties shall have jurisdiction, and that there shall be notice and opportunity for hearing given the parties.. [T]hese two fundamental conditions ... seem to be universally prescribed in all systems of law established by civilized countries. Twining v. New Jersey, supra. The opportunity to be heard, to be meaningful, should occur before property is taken. Boddie v. Connecticut, 401 U.S. 371. What the Constitution does require is "an opportunity ... granted at a meaningful time and in a meaningful manner, Armstrong v. Manzo, 380 US. 545, 552, 85 S.Ct. 1187, 1191 (1965) "for a hearing appropriate to the nature of the case,"

Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, at 313, 70 S.Ct. 652 at 657. In short, "within the limits of practicability," Id., 339 U.S. at 318, 70 S.Ct. at 659, a State must afford to all individuals a meaningful opportunity to be heard if it is to fulfill the promises of the Due Process Clause. NOTES: (1) An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency ofthe action and afford them an opportunity to present their objections. Milliken v. Meyers, 311 U.S. 457; Grannis v. Ordean, 234 U.S. 385; Priest v. Board of Trustees of Town of Las Vegas, 232 U.S. 604; Roller v. Holly 176 U.S. 398. The notice must be

of such nature as reasonably to convey the required information, Grannis v. Ordean, supra and it must afford a REASONABLE TIME FOR THOSE INTERESTED TO MAKE THEIR APPEARANCE. Roller v. Holly, supra, and cf. Goodrich v. Ferris, 214 U.S. 71. The federal court of appeals has rendered a decision in conflict with the decision of another federal court of appeals on the same matter. Material fact or law overlooked in the decision: On motion by employer for summary judgment in age discrimination action as to six former employees, the District Court, Richard C. Freeman, J., held that: (1) fact that two employees were reokaced by other members of protected class employees aged 40 to 70 did not constitute evidence by which employer

could conclusively rebut prima facie showing of age discrimination; (2) employees whose positions were eliminated entirely, or whose positions were eliminated and duties filled by others of same age could still succeed in creating inference of discriminatory employment practice, and (3) genuine issues of fact existed as whether employees were terminated or retired on basis of age and whether employees were qualified for positions, thus precluding summary judgment in favor of employer. Motion denied. See pg 357 Federal Supplement, Volume 464, MOORE v. SEARS, ROEBUCK AND CO. Civ. A. No. 76-1041 United States District Court, N.D. Georgia, Atlanta Division Feb. 1, 1979. Hence, the federal court of appeals so far sanction such a departure by a lower court, as to call for an exercise of this Court's power

of supervision. This has been incorporated in the petition for rehearing denied by the court below. The Respondent, General Electric Company is being represented in the instant case by VENABLE, BAETJER, AND HOWARD, Attorneys-at-Law, 1800 Mercantile Bank & Trust Building, 1 Hopkins Plaza, Baltimore, Maryland 21201. The Judicial Staff Directory, 1988, page 71 shows the names of members of the United States Court of Appeals for the Fourth Circuit, which included among the members, Judge Francis D. Murnaghan, Jr. On page 701 of this book under Biographies of Judges and Staff, the name of Judge Murnaghan appears. The following is listed:

.... 1952-54 Asst. Attorney General State of Maryland; 1952-57 associate, 1957-present, partner, VENABLE, BAETJER & HOWARD, Baltimore.

The 14th Amendment guarantee of due process assures ..... a trial before an impartial judge ... due process is denied when .. tried before a judge with a direct, personal, pecuniary interest in ruling against him. Turney v. Ohio, 273 U.S. 510, supra. An Unbiased Judge .. the court in 1927 applied the due process clause to require that state and local trials be held before impartial judges without any personal stake in their outcome. Congressional Quarterly's Guide to the Supreme Court, pg 529 supra.

Is there a conflict of interest in this case between Judge Murnaghan, the judge, and Judge Murnaghan, the partner in VENABLE, BAETJER, AND HOWARD, in denying the Petitioner a rehearing thus violating Petitioner's due process rights? The Respondent in this case is being represented by VENABLE, BAETJER, AND HOWARD.

The district court has not relied on:

a. Its own Scheduling Order.

b. Rule 16(f) of the Rules of Civil Procedure.

c. Its own Order issued on May 27, 1987 to both Plaintiff and Defendant. (Appendix, infra, pp. App. 5-6)

d. Acting to invalidate a deposition with reported errors, which included false stipulations made by counsel for the Respondent.

The lower court has not responded to any of the above in a specific manner or to the Petitioner's request for a subpoena of records presented at discovery and being held by counsel for the Respondent.

Finally, the decisions of the lower court did not rely on the safeguards provided by statute.

CONCLUSION

For the foregoing reasons, Petitioner Daisley respectfully requests this Court to grant his Petition for Certiorari.

Respectfully Submitted,

Earle A. Daisley

Earle A. Daisley
5658-167 Stevens Forest Rd.
Columbia, Maryland 21045
(301) 992-9621
Counsel, Pro Se for
Petitioner

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 88-2110

EARLE A. DAISLEY

Plaintiff - Appellant

v.

GENERAL ELECTRIC COMPANY

Defendant - Appellee

Appeal from the United States District Court for the District of Maryland, at Baltimore, Herbert F. Murray, District Judge. (CA-94-3216)

Submitted: July 28, 1988
Decided: December 19, 1988

Before HALL and PHILLIPS, Circuit Judges, and BUTZNER, Senior Circuit Judge

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Earle A. Daisley, Appellant Pro Se.
Stanley Mazaroff (VENABLE, BAETJER & HOWARD), for Appellee.

UNPUBLISHED

PER CURIAM:

Earle A. Daisley appeals from the district court's order granting defendant's motion for summary judgment. Our review of the record and the district court's opinion discloses that this appeal is without merit. Accordingly, we affirm on the reasoning of the district court. Daisley v. General Electric Co., CA-84-3216 (D. Md. May 9, 1988). We dispense with oral argument because the dispositive issues recently have been decided authoritatively.

AFFIRMED.

App. 3

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 88-2110

Earle A. Daisley,
Plaintiff - Appellant,

v.

General Electric Company,
Defendant - Appellee.

On Petition for Rehearing

Upon consideration of appellant's pro se petition for rehearing, and motion for leave to file petition out of time,

IT IS ORDERED that the motion to file petition for rehearing out of time is granted and the petition for rehearing is denied.

Entered at the direction of Judge Hall, with the concurrence of Judge Phillips and Judge Murnaghan.

For the Court

JOHN M. GREACEN
CLERK

FILED

JAN 31 1989

U.S. Court of Appeals
Fourth Circuit

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND
BALTIMORE 21201

CHAMBERS OF
HERBERT F. MURRAY
UNITED STATES DISTRICT JUDGE

May 27, 1987

Earle A. Daisley
5658-167 Stevens Forest Road
Columbia, Maryland 21045

Stanley Mazaroff, P.C.
Venable, Baetjer and Howard
1800 Mercantile Bank and Trust Building
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Re: HM84-3216 Daisley v. General Electric

Dear Sirs:

I have read and noted Defendant's Motion to Dismiss or, in the Alternative, for Summary Judgment and the memorandum in support thereof filed in connection with the above-captioned case.

Because the parties have filed with the court numerous additional materials outside of the pleadings, I have

chosen to consider the motion as one for summary judgment, pursuant to Federal Rule of Civil Procedure 12(b). The parties have 30 days from the date of the signing of this letter to submit an additional brief and-documentation on the summary judgment motion. The brief should address the standards to be met for summary judgment in Title VII and ADEA cases and should discuss the extent to which those standards are or are not met in the instant case.

Notwithstanding the informal nature of this letter, it is to be considered an order of the court.

Very truly yours,
/s/ Herbert F. Murray
United States District Judge

cc: Gail Preston, Deputy Clerk